

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

ADELE J. VESSIA,

Plaintiff,

-against-

KILOLO KIJAKAZI, Commissioner of
Social Security,

Defendant.

-----X

MEMORANDUM AND ORDER

Case No. 16-CV-2865-FB

Appearances:

For the Plaintiff:

CHARLES E. BINDER
485 Madison Avenue, Suite 501
New York, New York 10022

For the Defendant:

MARY M. DICKMAN
Assistant United States Attorney
Eastern District of New York
610 Federal Plaza
Central Islip, New York 11722

BLOCK, Senior District Judge:

The Court previously awarded plaintiff's counsel \$17,985 in attorneys' fees, finding that a higher award would constitute a windfall. Plaintiff appealed.

While the appealed was pending, the Second Circuit decided *Fields v. Kijakazi*, 24 F.4th 845 (2d Cir. 2022), which held that a high effective hourly rate, standing alone, does not constitute a windfall. *See id.* at 854. The parties stipulated to a remand for reconsideration in light of *Fields*.

Having considered the appropriate factors—(1) the ability and expertise of the

attorney(s); (2) the nature and length of the relationship counsel had with the claimant; (3) the claimant's satisfaction with the services provided by counsel; and (4) the uncertainty of an award of benefits, *see id.* at 854-856—without regard to the resulting effective hourly rate, the Court finds that an award of 25% of plaintiff's past benefits would not constitute a windfall.

Accordingly, the Commissioner is ordered to disburse to plaintiff's counsel the \$30,427.38 currently withheld from plaintiff's past benefits. Upon receipt, plaintiff's counsel shall remit to plaintiff the \$4,387.72 previously awarded pursuant to the Equal Access to Justice Act.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
November 14, 2022